

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

BMS CAT, INC.,

Plaintiff,

CIVIL ACTION NO.: 5:16-cv-11955

v.

**GREENBRIER HOTEL CORPORATION,
JAMES C. JUSTICE COMPANIES, INC.,
JUSTICE FAMILY GROUP, LLC,
PREMIER BANK, INC.,
SARAH C. ELLIS, Trustee,
JAMES H. ADKINS, Trustee,
JP MORGAN CHASE BANK,
FAYETTE COUNTY NATIONAL BANK, N.A.,
PAUL O. CLAY, JR., Trustee,
DENISE A. LIGHT, Trustee,
PENDLETON COMMUNITY BANK,
and WILLIAM GOODWIN,**

Defendants.

**DEFENDANTS GREENBRIER HOTEL CORPORATION,
JAMES C. JUSTICE COMPANIES, INC., AND JUSTICE FAMILY GROUP, LLC'S
PARTIAL MOTION TO DISMISS**

COME NOW Defendants, Greenbrier Hotel Corporation, James C. Justice Companies, Inc., and Justice Family Group, LLC, by and through counsel, J. Victor Flanagan and Jared C. Underwood of the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and hereby moves this Court to partially dismiss the Plaintiff's Complaint against these Defendants for the following reasons, which are set forth in greater detail in the Defendant's accompanying Memorandum of Law:

1. The Plaintiff's mechanic's liens against these Defendant's must be discharged as such

liens were not recorded within 100 days after the Plaintiff completed its work;

2. The Plaintiff's cause of action seeking to enforce its mechanic's liens must be dismissed as a matter of law as the Plaintiff failed to record such liens within 100 days after it completed its work; and

3. The Plaintiff lacks standing to bring an "unjust enrichment" cause of action as it never issued any payment to these Defendants and the Plaintiff claims that it entered into a contract with these Defendants and the proper remedy for a breach of any purported contract in the instant matter would be restitution and not unjust enrichment.

WHEREFORE, for the reasons set forth herein and in these Defendants' Memorandum of Law in Support of its Partial Motion to Dismiss, these Defendants move this Honorable Court to partially dismiss the Plaintiff's Complaint, specifically Counts I and III, against them and for such further relief as this Court deems appropriate.

**GREENBRIER HOTEL CORPORATION,
JAMES C. JUSTICE COMPANIES, INC.,
AND JUSTICE FAMILY GROUP, LLC,**

By counsel

/s/ J. Victor Flanagan

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Defendants.

CERTIFICATE OF SERVICE

I certify that on the 1st day of March, 2017, I electronically filed “*Defendants Greenbrier Hotel Corporation, James C. Justice Companies, Inc., and Justice Family Group, LLC’s Partial Motion to Dismiss*” with the United States District Court for the Southern District of West Virginia by using the CM/ECF system, and served this document upon the following parties or their counsel of record:

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/s/ J. Victor Flanagan

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